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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,449	01/23/2004	Bruce W. Anderson	GP106-11.DV4	9247
21365 7590 06/20/2008 GEN PROBE INCORPORATED 10210 GENETIC CENTER DRIVE Mail Stop #1 / Patent Dept. SAN DIEGO, CA 92121			EXAMINER RAMDHANIE, BOBBY	
			ART UNIT 1797	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/763,449	Applicant(s) ANDERSON ET AL.	
	Examiner BOBBY RAMDHANIE	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Response to Arguments

2. Applicant's arguments, see Remarks, filed 05/01/2008, with respect to the rejection(s) of claim(s) 1-32 under 102 and 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Collier et al (US5130254). Rejections to follow.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 18 & 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Collier et al (US5130254).
5. Applicant's claims are toward a method.
6. Regarding Claims 1, 2, 18, & 20, Collier et al discloses an automated method for removing a fluid substance from a collection device comprising a fluid-holding vessel and a cap, the method comprising the steps of: A) Puncturing a surface of the cap with a fluid transfer device (See Column 4 lines 29-32); B). Pausing movement of the fluid

transfer device prior to contacting a fluid substance contained in the vessel (See Column 4 lines 32-34); C). Continuing movement of the fluid transfer device after step B) until the fluid transfer device contacts the fluid substance contained in the vessel (See Figure 2 Item b, this is inherent to the method); D). Drawing at least a portion of the fluid substance into the fluid transfer device (See Figure 2 Item C – note the word “aspirate”); and E). Removing the fluid transfer device from the collection device (See Figure 2 Item E). The method as claimed is reciting a number of steps however, the order of the steps may differ. Collier et al therefore, anticipates the method as claimed.

Additional Disclosures Included: Claim 2: The method of claim 1, wherein the fluid substance is obtained from a biological fluid selected from the group consisting of blood, urine, saliva, sputum, mucous or other bodily secretion, pus, amniotic fluid, cerebrospinal fluid and seminal fluid (See Column 2 line 22); Claim 18: Wherein the cap contains a wick for limiting the release of an aerosol from the vessel during the penetrating step (See Column 3 lines 60-65); Claim 20: The method of claim 18 further comprising penetrating a seal affixed to the cap with the fluid transfer device, wherein the seal maintains the wick within the cap (See Column 3 lines 61-66). Self healing and wiping the probe are inherent steps to this method.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Collier et al in view of Köster et al (WO00/60361).

2. Applicants' claim is toward a method.

3. Regarding Claim 3, Collier et al discloses the method of Claim 1, except wherein the fluid transfer device is a plastic pipette tip. Collier et al does however disclose that the fluid transfer device is a stainless steel probe. Köster et al discloses a fluid transfer device to be used in an automated method for removing a fluid from a sealed container (See Abstract & Figure 1 & Page 24 lines 3-5) that may be used with disposable pipette tips (See Page 24 lines 18-19). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Collier et al with the pipette tips of Köster et al because this would limit the amount of cross contamination between reagents and samples observed and controlled by a wash solution of Köster et al (See Page 24 lines 15-17). Further it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a plastic pipette tip because the

plastic would be much less reactive to the reagents and samples being transferred by Köster et al (See Page 24 lines 17).

4. Claims 4, 5, & 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collier et al in view of Köster et al (WO00/60361) and Seto (US5874048).

Applicants' claims are toward a method.

Regarding Claims 4, 5, & 7, Collier et al in combination with Köster et al, disclose the method of claim 3, except wherein the pipette tip includes one or more ribs extending outwardly from an outer surface thereof, and wherein at least one of the ribs contacts the surface of the cap during step a). Seto et al discloses the formation of a rib either on the pipette tip or lid (See Column 3 lines 27-36). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the pipette tip of Köster et al to have ribs, of any number because according to Seto et al, these ribs may be of any shape and size as long as it can nullify the pressure difference between the space inside of the container and the space outside (See Column 3 lines 28-30).

5. Additional Disclosures Included: Claim 5: Wherein the pipette tip includes one or more grooves recessed from an outer surface thereof, and wherein at least one air passageway is formed between at least one of the grooves and the surface of the cap during step a). (See Column 3 lines 28-30); Claim 7: Wherein the cap includes one or more radially extending ribs positioned on the surface of the cap (See Column 3 lines 11-14).

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Collier et al in combination with Köster et al and in further view of Sandhage (US2906423).

7. Applicants' claim is toward a method.

8. Regarding Claim 6, the combination of Collier et al and Köster et al disclose the method according to Claim 3, except wherein a lubricant is applied to at least a portion of the pipette tip or the surface of the cap prior to step a). Sandhage discloses the method that utilizes a lubricant to puncture an enclosure using a needle. It would have been obvious to one of ordinary skill at the time the invention was made to modify the method from the combination of Collier et al and Köster et al with Sandhage because according to Sandhage, this application of lubricant would allow for easy insertion of the tip through the cap and also fills up the cut slit thereby preventing the entry of contaminating microorganisms (Column 2 lines 52-57).

9. Claims 8-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collier et al.

10. Applicants' claims are toward a method.

11. Regarding Claim 8, Collier et al discloses the method of Claim 1, except wherein the movement of the fluid transfer device is paused for a period of time sufficient to permit air to vent from within the collection device during step b). It would have been obvious to one of ordinary skill in the art to include a pause for a period of time sufficient to permit air to vent from within the collection device during step b) because according to Collier et al, the fluid transfer device is used to stretch the elastomeric material of the lid sufficient to allow air to leak through the opening and allow the pressure within the container to equilibrate with that of the outside container (See Column 4 lines 39-43).

12. For Claim 9, Collier et al discloses the method of Claim 1, except wherein the movement of the fluid transfer device is paused for at least about 0.5 seconds during step b). Collier et al does implicitly disclose that a time period is needed to allow an elastomeric material of the cap to open during penetration (See Column 4 lines 39-43). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Collier et al to include a pause time of 0.5 seconds during the puncture of the lid because Collier et al discloses that different materials will require a longer pause time to create a "leak" within the lid (See Column 4 lines 50-53).

13. For Claim 10, Collier et al discloses the method of claim 1 except further comprising a step of withdrawing the fluid transfer device from the punctured surface of the cap between steps a) and c). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Collier et al and include a withdrawal of the fluid transfer device from the punctured surface of the cap between steps a) and c) because Collier et al suggests that the best placement for penetrating the cap would be at the center axis, which would allow for the greatest depth or withdrawal of the tip between steps a) and c) however, the location of puncture may be changed as desired (See Column 4 lines 59-63). Further it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Collier et al and include a step of withdrawing the fluid transfer device from the punctured surface of the cap between steps a) and c) because elastomeric materials contain higher and lower density areas which may not allow for the probe to

puncture completely and this would result in the operator attempting to locate a different section of the lid to puncture.

14. For Claim 11, Collier et al discloses the method of claim 10, except wherein the movement of the fluid transfer device is paused for at least about 0.5 seconds during step b). Collier et al does implicitly disclose that a time period is needed to allow an elastomeric material of the cap to open during penetration (See Column 4 lines 39-43). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Collier et al to include a pause time of 0.5 seconds during the puncture of the lid because Collier et al discloses that different materials will require a longer pause time to create a "leak" within the lid (See Column 4 lines 50-53).

15. For Claim 12, Collier et al discloses the method of Claim 1, except, wherein the speed of the fluid transfer device during step c) is greater than the speed of the fluid transfer device during step a). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Collier et al to vary the speed of the fluid transfer to be slower during step a) and faster during step c because if the sealed container contains a large pressure difference between the environment and the inside of the container, the contents are likely to be explosively forced out through the punctured opening and contaminate the environment.

16. For Claim 13, Collier et al discloses the method of claim 12 except further comprising withdrawing the fluid transfer device from the punctured surface of the cap between steps a) and c). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Collier et al and include a

withdrawal of the fluid transfer device from the punctured surface of the cap between steps a) and c) because Collier et al suggests that the best placement for penetrating the cap would be at the center axis, which would allow for the greatest depth or withdrawal of the tip between steps a) and c) however, the location of puncture may be changed as desired (See Column 4 lines 59-63). Further it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Collier et al and include a step of withdrawing the fluid transfer device from the punctured surface of the cap between steps a) and c) because elastomeric materials contain higher and lower density areas which may not allow for the probe to puncture completely at one location and this would result in the operator attempting to locate a different section of the lid to puncture.

17. For Claim 14, Collier et al discloses the method of claim 12, except wherein the movement of the fluid transfer device is paused for at least about 0.5 seconds during step b). Collier et al does implicitly disclose that a time period is needed to allow an elastomeric material of the cap to open during penetration (See Column 4 lines 39-43). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Collier et al to include a pause time of 0.5 seconds during the puncture of the lid because Collier et al discloses that different materials will require a longer pause time to create a "leak" within the lid (See Column 4 lines 50-53).

18. For Claim 15, Collier et al discloses the method of claim 14 further comprising withdrawing the fluid transfer device from the punctured surface of the cap between steps a) and c). It would have been obvious to one of ordinary skill in the art at the time

the invention was made to modify the method of Collier et al and include a withdrawal of the fluid transfer device from the punctured surface of the cap between steps a) and c) because Collier et al suggests that the best placement for penetrating the cap would be at the center axis, which would allow for the greatest depth or withdrawal of the tip between steps a) and c) however, the location of puncture may be changed as desired (See Column 4 lines 59-63). Further it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Collier et al and include a step of withdrawing the fluid transfer device from the punctured surface of the cap between steps a) and c) because elastomeric materials contain higher and lower density areas which may not allow for the probe to puncture completely at one location and this would result in the operator attempting to locate a different section of the lid to puncture.

19. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Collier et al in view of Koch (US5578272).

20. Applicants' claim is toward a method.

21. Regarding Claim 16, Collier et al discloses the method of Claim 1, except wherein the surface of the cap punctured in step a) is a plastic molded in the form of a generally conical inner wall. Koch et al discloses a fluid transfer apparatus/system with this feature (See Figure 7 Item 81 & Column 3 lines 53-67). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Collier et al with the apparatus of Koch because the holder for containers (See Figure 1 Item 12), of Koch provides the necessary security which does not allow

for sideway motion, something Collier et al recommends to secure against (See Collier et al Column 4 lines 54-56).

22. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Collier et al, in view of Koch et al and Seto et al (US5874048).

23. Applicants' claim is toward a method.

24. Regarding Claim 17, Collier et al in combination with Koch disclose the method of Claim 16, except wherein the inner wall includes a plurality of radially extending striations. Seto et al discloses a fluid transfer device wherein the cap or the pipette may have striations on at least one or the other (See Column 3 lines 11-36). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Collier et al and Koch et al with the teachings of Seto et al to allow equilibration of the pressure within the sealed container with the environment (See Column 3 lines 26-31).

25. Claims 1 & 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collier et al in view of Levy (US6054099).

26. Applicants' claims are toward a method.

27. Regarding Claims 1 & 18 Collier et al discloses the method of Claims 1 & 18, except wherein the wick is selected from the group consisting of pile fabrics, sponges, foams, felts, sliver knits, and spandex. Collier et al does however disclose that the cap that have an elastomeric layer of suitable material (See Column 3 lines 61-66). Levy et al discloses a fluid transfer device which is used on combination with a container with an elastic sheet of foam plastic (See Column 4 lines 67). It would have been obvious to

one of ordinary skill in the art at the time the invention was made to modify the method of Collier et al with the elastic sheet of foam plastic from Levy et al because according the Collier et al, the cap construction is not important, so long as it is elastomeric (See Column 3 line 67 to Column 4 line 2).

28. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Collier et al in view of Koch, and in further view of Levy.

29. Applicants' claim is toward a method.

30. For Claim 19, Collier et al in combination with Koch disclose the method of Claim 16, except wherein the wick is selected from the group consisting of pile fabrics, sponges, foams, felts, sliver knits, and spandex. Collier et al does however disclose that the cap that have an elastomeric layer of suitable material (See Column 3 lines 61-66). Levy et al discloses a fluid transfer device which is used on combination with a container with an elastic sheet of foam plastic (See Column 4 lines 67). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Collier et al with the elastic sheet of foam plastic from Levy et al because according the Collier et al, the cap construction is not important, so long as it is elastomeric (See Column 3 line 67 to Column 4 line 2).

31. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Collier et al in view of Koch (US5578272).

32. Applicants' claim is toward a method.

33. Regarding Claim 28, Collier et al discloses the method of Claim 21, except wherein the surface of the cap punctured in step b) is a plastic molded in the form of a

generally conical inner wall. Koch et al discloses a fluid transfer apparatus/system with this feature (See Figure 7 Item 81 & Column 3 lines 53-67). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Collier et al with the apparatus of Koch because the holder for containers (See Figure 1 Item 12), of Koch provides the necessary security which does not allow for sideways motion, something Collier et al recommends to secure against (See Collier et al Column 4 lines 54-56).

34. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Collier et al, in view of Koch et al and Seto et al (US5874048).

35. Applicants' claim is toward a method.

36. Regarding Claim 29, Collier et al in combination with Koch disclose the method of Claim 16, except wherein the inner wall includes a plurality of radially extending striations. Seto et al discloses a fluid transfer device wherein the cap or the pipette may have striations on at least one or the other (See Column 3 lines 11-36). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Collier et al and Koch et al with the teachings of Seto et al to allow equilibration of the pressure within the sealed container with the environment (See Column 3 lines 26-31).

37. Claims 31 & 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collier et al in view of Levy (US6054099).

38. Applicants' claims are toward a method.

Regarding Claims 31 & 32, Collier et al discloses the method of Claim 30, except wherein the wick is selected from the group consisting of pile fabrics, sponges, foams, felts, sliver knits, and spandex. Collier et al does however disclose that the cap has an elastomeric layer of suitable material (See Column 3 lines 61-66). Levy et al discloses a fluid transfer device which is used in combination with a container with an elastic sheet of foam plastic (See Column 4 lines 67). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Collier et al with the elastic sheet of foam plastic from Levy et al because according the Collier et al, the cap construction is not important, so long as it is elastomeric (See Column3 line 67 to Column 4 line 2).

39. Additional Disclosures Included: Claim 32: The method of claim 30 further comprising penetrating a seal affixed to the cap with the fluid transfer device, wherein the seal maintains the wick within the cap (See Levy, Abstract).

40. Claims 21, 22, & 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collier et al.

41. Applicants' claims are towards a method.

42. Regarding Claims 21, 22, & 30, Collier et al discloses an automated method for removing a fluid substance from a collection device comprising a fluid-holding vessel and a cap, the method comprising the steps of: A). contacting a surface of the cap with a fluid transfer device (See Figure 2 Item B See movement sideways); B). Puncturing the surface of the cap with the fluid transfer device (See Figure 2 Item B); C). Entering the collection device with the fluid transfer device (See Figure 2 Item B); D). Contacting

the fluid substance with the fluid transfer device (See Figure 2 Item B); E). Drawing at least a portion of the fluid substance into the fluid transfer device (See Figure 2 Item C – note aspirate); and F). Removing the fluid transfer device from the collection device (See Figure 2 Item E). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method to incorporate a slower speed when contacting and then puncturing the surface of the cap and then using a faster speed upon puncturing through the cap and moving into the liquid because this would solve the problem identified by Collier et al (See Column 4 lines 39-43) because the slower speed is essential to allowing the pressure from inside of the container to equilibrate with the pressure of the environment –slowly therefore not disturbing the solution within the sealed container.

43. Additional Disclosures Included: Claim 22: Wherein the fluid substance is obtained from a biological fluid selected from the group consisting of blood, urine, saliva, sputum, mucous or other bodily secretion, pus, amniotic fluid, cerebrospinal fluid and seminal fluid (See Column 2 line 22); Claim 30: Wherein the cap contains a wick for limiting the release of an aerosol from the vessel during the penetrating step (See Column 3 lines 60-65).

44. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Collier et al in view of Köster et al (WO00/60361).

45. Applicants' claim is toward a method.

46. Regarding Claim 23, Collier et al discloses the method of Claim 21, except wherein the fluid transfer device is a plastic pipette tip. Collier et al does however

disclose that the fluid transfer device is a stainless steel probe. Köster et al discloses a fluid transfer device to be used in an automated method for removing a fluid from a sealed container (See Abstract & Figure 1 & Page 24 lines 3-5) that may be used with disposable pipette tips (See Page 24 lines 18-19). Köster et al. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Collier et al with the pipette tips of Köster et al because this would limit the amount of cross contamination between reagents and samples observed and controlled by a wash solution of Köster et al (See Page 24 lines 15-17). Further it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a plastic pipette tip because the plastic would be much less reactive to the reagents and samples being transferred by Köster et al (See Page 24 lines 17).

47. Claims 24, 25, & 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collier et al in view of Köster et al (WO00/60361) and Seto (US5874048).

Applicants' claims are toward a method.

Regarding Claims 24, 25, & 27, Collier et al in combination with Köster et al, disclose the method of claim 23, except wherein the pipette tip includes one or more ribs extending outwardly from an outer surface thereof, and wherein at least one of the ribs contacts the surface of the cap during step b). Seto et al discloses a fluid transfer device wherein a formation of a rib is either on the pipette tip or lid (See Column 3 lines 27-36). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the pipette tip in the combination of Collier et al and Köster et al to have ribs, of any number because according to Seto et al, these ribs may be of any

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shape and size as long as it can nullify the pressure difference between the space inside of the container and the space outside (See Column3 lines 28-30), which solves the problem of Collier et al that attempts to equalize the pressure within the sealed container and outside the container using a sideways motion.

48. Additional Disclosures Included: Claim 25: Wherein the pipette tip includes one or more grooves recessed from an outer surface thereof, and wherein at least one air passageway is formed between at least one of the grooves and the surface of the cap during step b). (See Column3 lines 28-30); Claim 27: Wherein the cap includes one or more radially extending ribs positioned on the surface of the cap (See Column 3 lines 11-14).

49. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Collier et al in combination with Köster et al and in further view of Sandhage (US2906423).

50. Applicants' claim is toward a method.

51. Regarding Claim 26, the combination of Collier et al and Köster et al disclose the method according to Claim 23, except wherein a lubricant is applied to at least a portion of the pipette tip or the surface of the cap prior to step a). Sandhage discloses the method that utilizes a lubricant to puncture an enclosure using a needle. It would have been obvious to one of ordinary skill at the time the invention was made to modify the method from the combination of Collier et al and Köster et al with Sandhage because according to Sandhage, this application of lubricant would allow for easy insertion of the tip through the cap and also fills up the cut slit thereby preventing the entry of contaminating microorganisms (Column 2 lines 52-57).

Telephonic Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BOBBY RAMDHANIE whose telephone number is (571)270-3240. The examiner can normally be reached on Mon-Fri 8-5 (Alt Fri off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bobby Ramdhanie, Ph.D./
Examiner, Art Unit 1797
/B. R./

/Walter D. Griffin/
Supervisory Patent Examiner, Art Unit 1797